(13)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 2835 of 2007

PETITIONER : Lav Kumar Sharma, aged about 48 years, son of Late Jaijairam Dubey, resident of village and Post Sambalpur, P.S. nandghat, Tah. Bemetara Distt. Durg (C.G.)

VERSUS

RESPONDENTS : 1. Chhattisgarh Infrastructure Development Corporation, through its Managing Director, CIDC, Raipur (C.G.)

2. The Depot (Aagar) Manager, Chhattisgarh Infrastructure Development Corporation, Balauda Bazar, Distt. Raipur (CG)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUITION OF INDIA.

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Bharat Rajput, Advocate for the petitioner.

ORDER

(Passed on 8th day of May, 2007)

1. The petitioner was admittedly appointed as driver on daily wages basis in the year 1980. The services of the petitioner was discontinued vide order dated 27.2.2002 on the ground that the petitioner indulged into activities of abusing and assaulting his fellow workers. The order was accordingly passed under section 8 (a) b (6) of the Permanent Standing Order.

2. Be that as it may. The petitioner has not filed any other document nor established his right to the post. The Supreme Court, while dealing with the matters of daily wagers, adhoc employees, probationers, temporary or contractual employees, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution of India, held that such appointment dehors the constitutional scheme amounts to back door entry in the matter of public employment.

3. In the case of Secretary, State of Karnataka and others vs. Umadevi (3) and others[1], the Supreme Court observed as under:

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> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who as temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."
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> "47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

4. For the reasons above-stated and as per the dicta laid down by the Supreme Court, the petitioner is not entitled to absorption/permanent status or regularisation in the service.

5. This petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

(2006) 4 SCC 1

Amit